

CAPT. LAURENCE D. TALBOT, RETIRED

FEBRUARY 25, 1958.—Committed to the Committee of the Whole House and
ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the
following

REPORT

[To accompany H. R. 8433]

The Committee on the Judiciary, to whom was referred the bill (H. R. 8433) for the relief of Capt. Laurence D. Talbot (retired), having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Capt. Laurence D. Talbot, United States Army (retired), of Alamo, Tex., of liability to refund \$1,072.50 to the United States as an overpayment of disability retirement for the period of July 1, 1952, through December 31, 1955. The bill also authorizes the payment to Captain Talbot of a sum equal to all amounts due him from the United States but withheld by reason of the liability released by the first section of the bill.

STATEMENT

Captain Talbot was retired from the Army on January 31, 1937, on the basis of a finding by an Army retiring board that he was permanently incapacitated for duty. He was retired in accordance with the provisions of section 1251 of the Revised Statutes and the act of April 23, 1930 (46 Stat. 253). On April 25, 1950, he was notified that he had the right to elect certain options for retirement-pay benefits under section 411 of the Career Compensation Act of 1949 (63 Stat. 802, 823). At that time, under applicable law, it was determined that Captain Talbot was under a disability of 30 percent when he was retired. Captain Talbot elected to continue his then monthly disability-retirement pay of \$268.13, as the highest of the available options. This monthly pay was increased to \$278.86 as of

May 1, 1952, and then to \$295.59, effective April 1, 1955, by reason of general pay-raise legislation.

Captain Talbot applied to the Veterans' Administration for a pension or compensation for disability resulting from active service with the Army. By a rating action approved February 7, 1951, Captain Talbot was granted a combined Veterans' Administration evaluation of 100 percent for service-incurred disabilities, effective December 21, 1950. Pursuant to this rating action, Captain Talbot was authorized to receive Veterans' Administration compensation in the amount of \$171 monthly.

Under the act of May 27, 1944 (58 Stat. 230; 38 U. S. C., 26c), before a person may receive a pension or compensation benefit from the Veterans' Administration he must waive a like amount of the retired pay being received from another department. Captain Talbot executed VA Form 8-651: Waiver of Retired Pay To Secure Compensation or Pension from Veterans' Administration, which was effective April 1, 1951. In accordance with that waiver, Captain Talbot's retired pay from the Army was reduced in the amount of \$171, which was the amount then being received from the Veterans' Administration. However, the monthly rate of compensation being paid Captain Talbot by the Veterans' Administration was subsequently increased. General legislation increasing veterans' benefits provided for automatic increases, first to \$193.50 and then to \$202 monthly. The Veterans' Administration took the position that the waiver signed by Captain Talbot was applicable to these subsequent increases as well as the initial amount and, therefore, that Captain Talbot was overpaid retired pay and not Veterans' Administration compensation. The Veterans' Administration notified the Department of the Army that collection of any overpayment resulting from a failure to deduct the increases was the responsibility of that Department.

The Department of the Army was not notified of the increases described above until December 31, 1955, and, in the meantime, Captain Talbot had received an overpayment of retired pay amounting to \$1,072.50, the amount stated in H. R. 8433. Captain Talbot was notified of this indebtedness on July 10, 1956. He authorized that his retired pay be made subject to a monthly deduction to retire the indebtedness.

The report submitted to this committee by the Department of the Army on this bill states that it is clear from the records of the case that Captain Talbot acted at all times with the utmost good faith, and that he made several visits to the local Veterans' Administration offices to question the propriety of the increases in his pension without a corresponding decrease in the amount of physical disability retired pay from the Army. This is borne out by information which has been submitted to this committee which indicates that Captain Talbot contacted the Veterans' Administration on three occasions to question the amount of the payments. He wrote a letter to the Veterans' Administration dated June 5, 1952, advising the Administration that he had received a compensation check in the amount of \$193.50. This was the first payment to include the increase authorized by the act of May 23, 1952. In response, he was advised that the \$193.50 was correct. He wrote similar letters in 1954 and in early 1955. He visited the Veterans' Administration offices in San Antonio, and was assured that the payments were correct.

The Veterans' Administration, in its report to this committee, indicates that it would interpose no objection to favorable consideration of the bill if the committee decides that repayment would work a hardship on Captain Talbot. The Veterans' Administration takes this stand because the overpayment of retired pay stems from the failure of the Veterans' Administration to timely notify the Department of the Army regarding the increased compensation payments. The committee finds that such repayment would work a hardship on Captain Talbot. Prior to being informed of the mistake, Captain Talbot had elected in April of 1954, to allot a portion of his retired pay to his widow upon his death. In the following financial statement submitted to the committee, Captain Talbot has shown how the reduction in his income has resulted in hardship to him:

Monthly income:

Present net Army retired pay	\$17. 91
Retired pay received from the VA as compensation	202. 00
Payment from Travelers Life Insurance Co. on a \$25,000 policy carrying a total-disability clause	250. 00
Income from farm for 1956 (this figure is not stable)	50. 00

Total

519, 91

Monthly expense: Which includes interest and principal payments on house and farm mortgages and personal loans, insurance, living costs, doctor and drug bills, taxes, etc. (I will itemize these expenses, should you desire it)

541. 60

\$541.60 minus \$519.91 equals \$21.69 deficit.

The Department of the Army has also advised the committee that it has no objection to the enactment of the bill.

Under these circumstances this committee has determined that Captain Talbot should be relieved of the obligation to repay the amount stated in the bill, and should be paid the amounts withheld from him. Accordingly this committee recommends that the bill be considered favorably.

DEPARTMENT OF THE ARMY,
Washington, D. C., December 19, 1957:

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of the Army for the views of the Department of the Army with respect to H. R. 8433, 85th Congress, a bill for the relief of Capt. Laurence D. Talbot (retired).

The bill provides as follows:

"That Captain Laurence D. Talbot (retired), of Alamo, Texas, be, and he is hereby, relieved of all liability to refund to the United States the sum of \$1,072.50. Such sum represents overpayment of disability retirement for the period July 1, 1952, through December 31, 1955, received from the Retired Pay Division, Finance Center, United States Army, and the Veterans' Administration.

"SEC. 2. The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the said Captain Laurence D. Talbot (retired), a sum equal to the aggregate of all amounts which have been withheld by the United States from amounts otherwise due him from the United States, by

reason of the liability of which he is relieved by the first section of this Act."

The Department of the Army has no objection to the above-mentioned bill.

Records of the Department of the Army show that Laurence Daly Talbot was born on October 29, 1891, at Denver, Colo. He enlisted in the Army of the United States as a private on December 15, 1917. He was discharged on June 8, 1918, in the grade of sergeant first class, in order to accept an appointment as a commissioned officer. He was appointed a first lieutenant, Quartermaster Corps, National Army, on June 8, 1918. On September 19, 1920, he was discharged from this commission in order to accept an appointment as a first lieutenant in the Regular Army on September 20, 1920. He was promoted to the grade of captain, Regular Army, on May 19, 1933. On October 28, 1936, he appeared before an Army retiring board and was found to be permanently incapacitated for duty because of psychoneurosis hysteria, conversion type, with stammering, incident to the service, originating on or about May 25, 1936. Therefore, he was retired from the Army on January 31, 1937, under the provisions of section 1251 of the Revised Statutes and the act of April 23, 1930 (46 Stat. 253).

On April 25, 1950, Captain Talbot was notified of his right to elect certain options for retirement-pay benefits under section 411 of the Career Compensation Act of 1949 (63 Stat. 802, 823). At that time, in accordance with law, it was determined that, when retired, he was under a disability of 30 percent. Captain Talbot elected to continue his then monthly disability retirement pay of \$268.13, as the highest of the available options. This monthly pay was increased to \$278.86, effective May 1, 1952, and to \$295.59, effective April 1, 1955, by reason of general pay-raise legislation.

Captain Talbot applied to the Veterans' Administration for a pension or compensation for disability resulting from active service with the Army. By a rating action approved February 7, 1951, Captain Talbot was granted a combined Veterans' Administration evaluation of 100 percent for service-incurred disabilities, effective December 21, 1950. These disabilities were diagnosed as "manic depressive psychosis, depressive type in partial remission," evaluated as 70-percent disabling from December 21, 1950, and a hearing loss, evaluated as 40-percent disabling from December 21, 1950. Pursuant to this rating action, Captain Talbot was authorized to receive Veterans' Administration compensation in the amount of \$171 monthly.

The act of May 7, 1944 (58 Stat. 230; 38 U. S. C. 26c), provides as follows:

"That any person who is receiving pay pursuant to any provision of law relating to the retirement of persons in the regular military or naval service, and who would be eligible to receive pension or compensation under the laws administered by the Veterans' Administration if he were not receiving such retired pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired pay is paid of a waiver of so much of his retired pay and allowances as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the

Veterans' Administration of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired pay."

Under the provisions of this law, before any person may receive a pension or compensation benefit from the Veterans' Administration, he must waive a like amount of the retired pay being received from another Department.

Effective April 1, 1951, Captain Talbot executed VA Form 8-651: Waiver of Retired Pay to Secure Compensation or Pension From Veterans' Administration. That form sets forth that, pursuant to the provisions of the act of May 27, 1944, the applicant waives that portion of his retired pay "as is equal in amount to the compensation or pension which may be awarded by the Veterans' Administration." Pursuant to this waiver, Captain Talbot's retired pay from the Army was reduced in the amount of \$171 (the amount of pension then being received from the Veterans' Administration). The monthly rate of compensation paid to Captain Talbot by the Veterans' Administration was automatically increased to \$193.50 monthly, effective July 1, 1952, and to \$202 monthly, effective October 1, 1954, pursuant to general legislation increasing the amounts of veterans' benefits (66 Stat. 90; 68 Stat. 915).

The Veterans' Administration has taken the position that the waiver executed by Captain Talbot is not limited to the original award of compensation, but is also applicable where the returns of compensation are increased, witness the phrase, "which may be awarded," in the waiver form. In an opinion by the General Counsel of the Veterans' Administration, it was held that Captain Talbot was overpaid retired pay and not Veterans' Administration compensation, and, therefore, was not entitled to have this indebtedness submitted to the Committee on Waivers and Forfeitures of the Veterans' Administration. Therefore, the Veterans' Administration repaid to Captain Talbot all amounts which had previously been withheld from his pension, and notified the Department of the Army that collection of any overpayment was the responsibility of this Department.

The Department of the Army was not notified of the increases in Captain Talbot's Veterans' Administration compensation until December 31, 1955. In the meantime, Captain Talbot had received an overpayment of retired pay in the amount of \$1,072.50. On July 10, 1956, he was notified of this indebtedness by the Finance Center, United States Army, and requested to submit either full payment or a monthly collection schedule. Captain Talbot authorized a deduction of the sum of \$22.50 monthly from his retired pay, for 27 months, effective August 1, 1956, and \$33 monthly for the following months until the indebtedness would be liquidated. Collection is now being executed in accordance with Captain Talbot's request. There is no provision for administrative waiver of this indebtedness by the Department of the Army.

It is clear, from the records in this case, that Captain Talbot acted at all times with the utmost of good faith. He made several visits to the local Veterans' Administration offices to question the propriety of the increases in his pension without a corresponding decrease in the amount of physical disability retired pay from the Army. The Veterans' Administration has acknowledged that "the Department of the Army should have been promptly notified when the monthly rate of compensation to the veteran was automatically increased by Public

Laws 356 and 695, so that deductions of equal amounts from his retired pay might have been made."

Captain Talbot is now approximately 66 years of age and still suffering from the above-mentioned disabilities. According to a financial statement of monthly income and expenses submitted by him on December 12, 1956, the deductions of any amounts from his retired pay will work a substantial hardship.

For the foregoing reasons, the Department of the Army has no objection to the enactment of this bill.

The cost of this bill if enacted will be \$1,072.50.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

VETERANS' ADMINISTRATION,
Washington, D. C., October 9, 1957.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CELLER: Further reference is made to your request for a report by the Veterans' Administration on H. R. 8433, 85th Congress, a bill for the relief of Capt. Laurence D. Talbot (retired), which provides as follows:

"That Captain Laurence D. Talbot (retired), of Alamo, Texas, be, and he is hereby, relieved of all liability to refund to the United States the sum of \$1,072.50. Such sum represents overpayment of disability retirement for the period July 1, 1952, through December 31, 1955, received from the Retired Pay Division, Finance Center, United States Army, and the Veterans' Administration.

"SEC. 2. The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the said Captain Laurence D. Talbot (retired), a sum equal to the aggregate of all amounts which have been withheld by the United States, by reason of the liability of which he is relieved by the first section of this Act: *Provided*, That no part of the amount appropriated in this section shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The records of the Veterans' Administration disclose that Laurence D. Talbot served continuously in the Army from December 15, 1917, to January 31, 1937, when he was retired as a captain by reason of physical disability.

Based on his application for compensation and pension, and an examination by the Veterans' Administration, Captain Talbot was found to be 100-percent disabled from service-connected conditions and awarded disability compensation at the rate of \$171 monthly, effective April 1, 1951. At that time, Captain Talbot was in receipt of retired pay from the Department of the Army and, pursuant to

the provisions of the act of May 27, 1944 (58 Stat. 230; 38 U. S. C. 26 (c)), he executed a waiver form which, in pertinent part, reads: "I hereby waive that portion of my retired pay as is equal in amount to the compensation or pension which may be awarded by the Veterans' Administration." On April 15, 1951, the Department of the Army certified to the Veterans' Administration that Captain Talbot's total retired pay, \$268.13 monthly, had been reduced by the mentioned sum of \$171, effective April 1, 1951.

The applicable monthly rate of compensation was increased to \$193.50, effective July 1, 1952, under the act of May 23, 1952 (66 Stat. 93; 38 U. S. C. 471a-5), and further increased to \$202, effective October 1, 1954, under the act of August 28, 1954 (68 Stat. 915; 38 U. S. C. 748). These increases were automatically made by the Veterans' Administration in this case without prior notice to the Department of the Army. By letter dated August 5, 1952, Captain Talbot advised the Veterans' Administration of his receipt of compensation check in the amount of \$193.50 (representing the first payment to include the increase authorized by the act of May 23, 1952), and requested information as to the correctness of the amount. In response, he was advised that \$193.50 was correct. In a letter dated January 23, 1956, Captain Talbot states that, upon receipt of compensation check in the amount of \$202 (which included the increased award provided by the act of August 28, 1954), he contacted the Veterans' Administration, personally, to verify the correctness of the amount, and was assured that he was entitled thereto.

Instructions issued by the Veterans' Administration subsequent to the enactment of the mentioned laws provided that, in cases involving waiver of retired pay, the increase in compensation was not to be made automatically, but would be accomplished only after correspondence with the Department of the Army regarding the increase of the deductions from retired pay to the amount equivalent to the increased rates of compensation. The automatic adjustment actions by the Veterans' Administration in this case, without corresponding with the Department of the Army, resulted in an overpayment of retired pay by that Department of \$1,072.50, the amount which H. R. 8433 proposes to relieve Captain Talbot of liability to refund to the United States.

As the payment of retired pay is a matter under the jurisdiction of the Department of Defense, H. R. 8433 appears to be of primary concern to that Department, from whom it is understood your committee has requested a report. However, because the overpayment of retired pay in this case stems from the failure of the Veterans' Administration to timely notify the Department of the Army regarding increased compensation payments, we would interpose no objection to favorable consideration of H. R. 8433 if the committee decides that repayment would work a hardship on Captain Talbot.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

H. V. HIGLEY, *Administrator.*

